BRB No. 07-0963

L.D.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
NORTHROP GRUMMAN SHIP SYSTEMS, INCORPORATED	)	DATE ISSUED: 06/20/2008
	)	
	)	
Self-Insured Employer-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
	)	ORDER on MOTION
Respondent	)	for RECONSIDERATION

Employer has filed a timely motion for reconsideration of the Board's Decision and Order in this case, *L.D. v. Northrop Grumman Ship Systems, Inc.,* BRBS , BRB No. 07-0963 (Mar. 19, 2008); 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407. Claimant responds that employer's motion should be denied. We hereby deny employer's motion.

To recapitulate, claimant sustained back injuries while working for employer on July 27, 1999, and January 23, 2001. Employer commenced the payment of benefits to claimant; however, following an evaluation of claimant by a physician chosen by employer, employer suspended its payment of benefits to claimant and offered claimant modified employment. Claimant declined employer's offer of employment. Following an informal conference, the district director scheduled claimant for an independent medical examination. Claimant's counsel informed the district director that claimant did not wish to be examined by the physician selected by the district director.

On February 16, 2007, the district director referred the case to the Office of Administrative Law Judges. Thereafter, in an Order dated March 21, 2007, the district director suspended claimant's compensation due to his refusal to attend the scheduled medical examination. In its decision, the Board held that as neither the Act nor regulations allows for simultaneous jurisdiction by a district director and an

administrative law judge over the issue of the suspension of an employee's compensation; only the entity before whom the case is pending may issue an order suspending compensation. *L.D.*, slip op. at 5-6. Accordingly, as only the administrative law judge had the authority to suspend claimant's benefits as of the date the claim was referred to the Office of Administrative Law Judges, February 16, 2007, the Board vacated the district director's March 21, 2007, Order as he lacked authority to issue it, and it remanded the case to the district director for further proceedings.[1]

In its motion for reconsideration, employer contends that, as the district director issued an Order on March 21, 2007, suspending claimant's compensation, the Board lacked jurisdiction to hear claimant's appeal since Section 19(h) of the Act, 33 U.S.C. §919(h), suspends proceedings during the period in which claimant refuses to attend a medical examination scheduled by the Secretary of Labor. *See also* 33 U.S.C. §907(f). Employer's contention is without merit. Section 19(h) would affect proceedings on the merits of the claim for compensation but it does not affect a timely appeal challenging the validity of the suspension Order itself; such a result would make such Orders unreviewable. Here, the Board held that the district director lacked jurisdiction to issue his March 21, 2007, Order once the claim was referred to the Office of Administrative Law Judges on February 16, 2007. Section 19(h) does not affect this result.

Alternatively, employer requests that the Board modify its decision to reflect employer's position that "only physicians who have been in some form of direct employment with an employer within two years of an independent medical examination would be disqualified from performing the [claimant's] evaluation" under Section 7(i) of the Act, 33 U.S.C. §907(i), and Section 702.411(c) of the regulations, 20 C.F.R. §702.411(c). Employer's Motion for Recon. at 4. We decline employer's invitation to further interpret Section 7(i). In our decision, the Board stated only that the district director must follow the plain language of Section 7(i).[2] Employer may present its contentions regarding this issue for consideration on remand.

[1] In the interim, the administrative law judge had remanded the case to the district director.

[2] However, we will clarify our decision insofar as it may have implied that a physician who treats an employee of employer could be barred under Section 7(i). A treating physician would be "employed" by claimant. Section 7(i) bars any physician who, during a two-year period prior to being selected for an independent medical examination, "has been employed by, accepted or participated in any fee" from an insurance carrier relating to a claim under the Act. 33 U.S.C. §907(i). As stated in our decision, the district director "shall not" employ such a physician.

Accordingly, employer's motion for reconsideration is denied. 33 U.S.C. §921(b)(5); 20 C.F.R. §§801.301(c), 802.409.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge